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THE INDIRECT CRITERIA FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

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Abstract: The twenty-second diplomatic session of the Hague Conference on Private International Law closed on 2 July 2019 with the adoption of the Convention on the Recognition and Enforcement of Foreign Decisions in Civil and Commercial Matters, also known as the Judgments Convention. The present work focused on analyzing the indirect criteria that are provided for in art. 5 of the Conference of the Hague for the recognition and enforcement of judgments. This is an ambitious project that will give rise to a global enforcement regime on the circulation of judgments. The shortcomings are still many as well as the debate between civil and common law, but the time is ripe for a concrete project of broader inspiration, more political and less juridical. The method used in our work is based on comparative doctrine and jurisprudence on a global level.

Key words: Convention of Hague of 2019, execution of sentences, CJEU, Bruxelles I bis, international private law.

Introduction

The Hague Conference of 2019 (Chew, 2019; Liakopoulos, 2019a; Brand, 2020; Sun, Wu, 2020; He, 2020; Hu, 2020; Jang, 2021; Jueptner, 2020) over time and after long pauses has produced numerous multilateral conventions in different areas and has paid attention to the monitoring activity developed in time. Technological development, the expansion of markets and the rapid growth of transnational relations of an economic nature are some of the challenges that according to the organs of the Conference need concrete interventions and commitments.

One of the challenges to private international law is the recognition of sentences globally and above all the execution of judgments. The conference of 2019 sought to deal not so much with the unification of the material law of the Contracting States but with the uniform material law (Pertegàs, 2017) given that they are committed to a broader and more concrete security coordination through the mechanism of rules of private international law. The goal continues to be the same, namely the unification at various levels and in time of the rules of private international law. Thus we can understand that also in the future the convention will be called upon to produce respectively

legislative and above all monitoring texts[1]. The Special Commission met four times between 2016 and 2018 preparing four drafts[2].

In reality we can speak of a convention that was based on an ad hoc project for the recognition and enforcement of decisions as an instrument of judicial cooperation that will develop international trade and its investments, thus addressing obstacles through a balance of natural and legal persons in cross-border transactions. For yet another time, attention as well as the protection of the right of access to justice has been given to the reduction of costs and related risks that accompany international transactions[3].

What are the indirect jurisdictional criteria?

Particularly art. 5 of the Project of 2019 has listed the indirect jurisdictional criteria that are of interest to our analysis. This is the most important and challenging article of the Convention for the recognition and execution of decisions given that the convention model has chosen to appoint an ad hoc commission

1HCCH, Recognition and Enforcement of Foreign Judgments, Twenty-Second Session (18 June-2 July 2019), Draft Convention on the recognition and enforcement of foreign judgments in civil or commercial matters, prepared by the Special Commission of May 2018.

222nd Diplomatic Session, Adoption of the 2019 HCCH Convention on Recognition and Enforcement of Foreign Judgments in Civil or Commercial matters.

3HCCH, Overview of the Judgments Project, 2017.

for the drafting of the draft. A draft that we can call double, unique and mixed, complicated and suitable to facilitate and not repeat the mistakes made during the negotiation of the first Judgments Project of '99.

The jurisdiction, as the title of the relevant article states, has an indirect nature and governs the requirements to satisfy the decision recognized and enforced in a contracting State other than the one that issued it. Individual Member States can freely use the jurisdictional criteria provided for by their own systems and their own judgments that will be recognized and executed in another State and in the event that the jurisdiction titles are compatible with the indirect criteria and provided for by art. 5 of the Project. We are talking about an exclusive principle that is specified in art. 16 of the Project[4].

Obviously, according to art. 5, the indirect criteria have an exclusive nature constituting a circle where the decisions of the State of origin must be recognized and enforced in the State that was a contracting party. Art. 5 does not preclude the possibility for individual Member States to have a more general and free status, but recognizes the execution of foreign judgments on the basis of jurisdictional criteria and not listed in the convention.

4HCCH, Recognition and Enforcement of Foreign Judgments, Twenty-Second Session (18 June-2 July 2019), Draft Convention on the recognition and enforcement of foreign judgments in civil or commercial matters, prepared by the Special Commission of May 2018.

The new convention does not interfere in a clear and precise way with the internal jurisdiction criteria and rules, but only indirectly does it affect the similar jurisdictional criteria of the Project, thus having more opportunities to circulate according to the principles of the convention.

The elements of article 5

Art. 5 is divided into three paragraphs. The first paragraph is the most important and richest as it provides thirteen indirect jurisdictional criteria (letter A-m). The second paragraph refers to one's own decisions which are pronounced against consumers and workers, thus providing for the relative discipline in part derogatory that respects what is already referred to in the first paragraph.

The third paragraph provides for the specific jurisdictional criteria concerning the matter of intellectual property (Wang, 2020). The way remains open for the diplomatic session in charge of adopting the convention to decide the path that will follow with regard to the exclusion or not of intellectual property within the scope of the convention (He, 2021). If the Special Commission decides not to include the matter and elements involving intellectual property, the relative decisions will be recognized and enforceable according to the terms of the Convention only and exclusively with these criteria and not those listed in the first paragraph.

The habitual residence of the person involved in the identification

A foreign judgment to be eligible for recognition and enforcement according to art. 5, par. 1, lett. a) of the Convention requires that the person involved in the recognition and/or execution should be habitually resident in the State of origin when he became a party to the proceedings in that State.

This is the connecting factor that represents the residence of the subject as a requirement during the procedure that connects with the legitimacy and affirmation of the jurisdiction. This is the only indirect criterion of the jurisdiction among the others that are part of the first paragraph and that breaks through on personal characteristics since the others focus on the consent of the parties or on links with the dispute and where the relative decision was pronounced.

Instead, art. 6 of the Convention referred to the habitual residence of a general nature and applicable to all decisions that come within the scope of the Regulation and excluding those of exclusive jurisdiction. The habitual residence criterion certainly represents a wide scope of application when using the expression of the Conference: "(…) the person against whom recognition and enforcement is sought (…)" we can understand that the parties involved to whom the decision was pronounced

may also include consortium, interveners, summonsed or heirs. It is understood that when the procedure is initiated in the State in which the subject is habitually resident and who dies during or after the final decision from the State of origin, the relative heirs accept the inheritance when the obligations of the deceased are transmitted. Also who may request the recognition and enforcement of the relative decision according to art. 5, par. 1, lett. a) it takes into account the habitual residence of the deceased[5]. This principle called *actor sequitur forum rei* is shared in most of the international legal systems and instruments. Of course there is a difference between natural and legal persons. Individuals do not report anything to the convention. In this case it is understood that the habitual residence coincides with that which is used in the practice of international regulations and conventions and corresponds to the personal interests of the natural person[6]. The notion of habitual residence coincides with a general individual consent in the place where the person generally lives and not fictitious once the following elements also exist: current residence, continuity in time, as a criterion of evaluation and in intention to maintenance

5HCCH, Twenty-Second Session, Recognition and Enforcement of Foreign Judgments, 18 June-2 July 2019, The Hague, Judgments Convention: Revised Draft Explanatory Report by F. J. Garcimartín Alférez, G. Saumier, Prel. Doc. No 1 of December 2018.

6CJEU, C-393/18PPU, UD of 17 October 2018, ECLI:EU:C:2018:835, published in the electronic Reports of the cases.

of residence for a specific period of time and place (Hay, Borchers, Symeonides, 2018).

As regards legal persons, the Project has defined the characteristics of identifying habitual residence according to the rules of the Regulation Rome I, art. 19, and Rome II, art. 23 (Liakopoulos, 2019b)[7], and in the United States according to some judgments (Peddie, 2012; McCaroll, 2014; Doernberg, 2014; Brand, 2015; Deno, Dees, 2021)[8]. Art. 3, par. 2 of the

7Proposal for a Regulation of the European Parliament and the Council on the law applicable to non-contractual obligations (Rome II), Bruxelles of 22 July 2003 COM(2003) 427 final, 2003/0168 (COD), p. 16 which is observed that: "(...) the need for a special rule here is sometimes disputed on the ground that it would lead to the same solution as the general rule in art. 3 the damage for which compensation is sough being assimilated to the anti-competitive effect on which the application of competition law depends. While the two very often coincide in territorial terms they will not automatically do so: for instance, the question of the place where the damage is sustained is tricky where two firms form State A both operate on market B. Moreover, the rules of secondary connection of the common residence and the exception clause are not adapted to this matter in general (...)". The Rome I and II regulations in the area of the law applicable to contractual and non-contractual obligations also include habitual residence: "(...) companies, associations and legal persons (...) where their central administration is located (...) or, in the event that the contract is concluded by a branch, agency or other office or the fact that caused the damage to occur or the damage arises during the exercise of them (...) the place where it is located in the branch, agency or other place of business (...)". Art. 19 of Rome I clarified the meaning of the term of habitual residence in contrast with the ontologically flexible character of the aforementioned notion, it allows to resolve questions on the concept of the consumer's residence. This is a fairly arbitrary position because it is missing in art. 6 any reference to the place of conclusion of the problematic contract, especially in the cases of business to consumers concerning online contracts. In the Rome system it is not rejected as in fact impracticable because it is missing in art. 6 of the Regulation the possibility of evaluating the consumer's residence by linking it to other precise time scans such as those marked respectively by the receipt of the order by the consumer who is an individual or the specific proposal or advertising. The criterion of direct activity that is shown in art. 15 of the Regulation Brussels I was designed to hold modern techniques of distance marketing without changing the content of the scope *ratione personarum* of the special conflict rule.

8Goodyear Dunlop Tires Operations, S. A., et al. v. Brown, 564 U. S. 915 (2011).

Project affirms that: "(…) person other than a natural person (…)" includes the category of associations without legal personality such as legal persons. Therefore also in this case we refer to the habitual residence where legal persons and generally all entities other than natural persons are part of certain elements of participation such as: the statutory seat, what is the law that they have been established, the registered office find the central administration and main business center (Garcimartín, Saumier, 2020). We are talking about criteria of a juridical nature and in connection with each other that have as their purpose the localization of the State. There is no hierarchy between these elements and they cannot be mutually excluded since they can be evaluated to verify whether the legal person is considered habitually resident in two or more places. In these cases, the habitual residence among those identified can be used to locate the defendant to be eligible for recognition and enforcement in another Contracting State according to the convention.

Criterion of the domicile of the defendant. Does it persist or is it exceeded?

Habitual residence in civil and commercial matters (Zirat, 2020;

According to Deno and Dees; "(…) in fact recalling the notion of habitual residence, affirm that, if legal persons are involved, jurisdiction can only take root in a State where the companies are "essentially at home" and, therefore, in the place of their incorporation or head office (…)".

Muir Watt, 2020) is a novelty given that both the Brussels Convention of 1968 and the Regulation Brussels I bis (Gascòn-Inchausti, 2014; Fitchen, 2015; Liakopoulos, 2018)[9] have included in their rules the domicile of the defendant, which has a dual function. This is primarily a condition of application of the regulatory instrument that applies in the event that the defendant is domiciled in a Contracting State and on the other hand represents the general forum of the defendant.

This regime, which refers to the defendant's domicile and not to that of habitual residence, is also in use for the United States[10], despite the fact that part of the doctrine and part of the jurisprudence makes use of the habitual residence (Parry, 2015).

The Conference of the Hague introduced the general criterion of habitual residence (Cavers, 1972, Masmejan, 1994; Zhang, 2018), also influencing the relevant Union regulations in various matters (Caamiňa Domìnguez, 2011; Palao Moreno, Alonso Landeta, Buìgues, 2015; Limante, Kunda, 2017)[11].

9Regulation 1215/2012. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, entry in force from 10 January 2015. See in argument the next cases from the CJEU: C-368/16, Assnes Havn v. Navigatos Management (UK) limited of 13 July 2017, ECLI:EU:C:2017:546; C-341/16, Hanssen Beleggingen v. Tanja Prast-Knippin of 5 October 2017. ECLI:EU:C:2017:738; C-230/15, Brite Strike Techonologies v. Strike Strike Tecnologies SA of 13 July 2016, ECLI:EU:C:2016:560; C-350/14, Lazar v. Allianz Spa of 10 December 2015, ECLI:EU:C:2015:802, all the above cases published in the electronic Reports of the cases.

10Uniform Foreign-Country Money Judgments Recognition Act, drafted by the National Conference of Commissioners on Uniform State Laws.

11Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning

Each system at a national level is changeable and heterogeneous so that the editors of the project have chosen to follow a factual criterion considering the subject to be at the center of interest and localized to the competent judge to decide according to the called order (Van Hoogstraten, 1967)[12]. Obviously there is no choice of constraint and a precise definition in the conference (De Winter, 1969) but the choice according to our opinion has a more functional character since in this way the judge called will be able to decide according to logic and without other interpretations on the matter that go back to the choice of domicile (Hay, Borchers, Symeonides, 2018).

jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. A proposal for a revised Regulation was adopted by the European Commission on June 30, 2016. Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), COM(2016) 411 final. Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession OJ L 201, 27.7.2012, p. 107–134. This refers to the already examined Regulations establishing: the European enforcement order, the European order for payment, the procedure for small claims and the European order for attachment. See from the CJEU: C-379/19, Società Immobiliare Al Bosco of 4 October 2018, ECLI:EU:C:2018:806, published in the electronic Reports of the cases.

12The Brussels I bis Regulation does not provide any concrete definition for the domicile of natural persons but has recalled the national legal systems. Art. 62 provides that the court seized, in order to understand whether the party is domiciled in a State adhering to the Regulation, should apply the law of its own system. However, if the party is not domiciled in a Member State, the court seized will have to apply the law of the State in which it is domiciled for goats if in this case it is domiciled in another State. As regards legal persons, Regulation no. 1215/2012 provides an autonomous notion of domicile in art. 63.

The judgments in contractual matters

In the case of a recognizable contractual obligation suitable for the execution of a sentence, art. 5, par. 1, lett. g) established that the prosecutable path of the State in which the performance of the obligation took place will be followed, including the contract stipulated by the parties as well as the law applicable to the contract. The safeguard clause is also envisaged as a measure that specifies that the listed criteria may include the defendant's activities in relation to the obligation that clearly have a substantial and precise connection with that State. This is a step forward since it is clearly a compromise between different jurisdictional cultures of an American and European nature that reflect and promote the correct administration of justice through the enhancement of proximity criteria. The objective is to protect the defendant and also to meet the criteria of fair and due process according to the territory in which the defendant lives and makes use of the rules of that State.

The place of execution of the obligation

Lett. g), par. 1 of art. 5 of the Convention actually repeats art. 7, par. 1, lett. a) of Regulation Brussels I bis where the defendant may be sued: "(...) in contractual matters, before the jurisdiction of the place of performance of the obligation raised in court (...)"; remaining faithful to art. 5, no. 1, of the 1968 Brussels

Convention which established that:

"(...) the defendant may be sued (...) in the court of the place where the obligation alleged in court was or must be performed (…)" (Liakopoulos, 2019a).

The project of the Hague does not clearly identify this rule as in the case of contracts for the sale of goods or in the case of the provision of services as we have seen in art. 7, par. 1, lett. b), of Regulation Brussels I bis[13], but the obligation that has as its object the decision and as a consequence the obligation in which the relative sentence was pronounced.

Position that dates back to EU law since we recall the old De Bloos judgment of 1976[14] as the basis of the Convention of Brussels which revealed the European area only with reference to art. 7, par. 1, lett. a), of the Brussels I bis Regulation and only for contracts that are different from those for the purchase and sale of goods and the provision of services (Gascòn-Inchausti, 2014). Therefore it is understood that the determination of the place of performance of the obligation will be different and according to the party that proposes the cause. It is not easy to use this rule of more European, regional and non-global

13The Brussels I bis Regulation has innovated the rule that was encountered in the Brussels Convention and the Brussels I Regulation, specifying that: "(...) place of the obligation alleged in court (...) in the hypothesis of two contracts widely used in the practice: the purchase and sale of goods and the provision of services. In the case of the sale of goods, the place of the obligation raised in court is (...) the place, located in a Member State, where the goods were or should have been delivered under the contract (...) in the hypothesis of provision of services (…) place, located in a Member State, where the services were or should have been provided under the contract (…)".

14CJEU, C-14/76, De Bloos of 6 October 1976, ECLI:EU:C:1976:134, I-01497.

inspiration that is part of the Brussels I bis Regulation since a decision issued on the basis of the rules of the Regulation may not be suitable for execution according to the future convention. Whenever the performance fulfillment judge decides on another obligation of the contract that has to do with the payment of the price. In this case, the judge is based on the jurisdiction criterion according to art. 7, par. 1, lett. b) of the Regulation Brussels I bis and cannot be recognized according to the Convention of the Hague but according to internal, national regulations as required by art. 16 of the Project (Nonomi, 2015-2016).

The identification of the place of performance respects the will of the parties expressed in the contract or in the absence of an agreement between the parties and according to the law applicable to the contract. On the contrary, the Brussels I bis Regulation, art. 7, par. 1, lett. b) identifies the place of performance, i.e. the place where the goods were delivered according to the contract and the place where the services were due to be provided on the basis of the contract.

This path also arises debates of discussion according to the identification of the place of execution and on the basis of the law applicable to the contract. It is not always easy to identify by a judge whether the uniform rules provided for by Regulation Rome I apply in the territory of the European Union, avoiding the conflict rules that arise in the country of origin and in the

one requested (Wildersdin, Vyskova, 2020). It may happen that recognition and execution are denied because the court involved can pay attention to the place of execution despite the fact that it is not located in the State of origin.

The purposeful and substantial connection test

The recognition and enforcement of the judgment are not necessary to be satisfied according to the foreign decision when the defendant in question does not have a close connection that is named in the Project of the Hague as purposeful and in substantial connection with that particular State[15].

Certainly it is a safeguard clause where the judicial approach has a common law character that has been noted in American jurisprudence where jurisdiction is based in the event that the defendant has carried out activities and is in close connection with the State of origin[16].

This link is not based on the place of performance of the

15For the test: purposeful and substantial connection, see the: Third Meeting of the Special Commission on the Recognition and Enforcement of Foreign Judgments 13-17 November 2017, Note on the Concept of "Purposeful and Substantial Connection" in article 5(1)(g) and 5(1)(n)(ii) of the February 2017 Draft Convention, by R.A., Brand, C., Mariottini, Prel. Doc. No 6 September 2017.

16See, International Shoe v. State Washington, 326 U.S. 310 (1945), J. Hylton, Time for a new shoe? Making sense of specific jurisdiction, Missouri Law Review, 87 (2), 2022, pp. 568ss. Hanson v. Denckla, 357 U.S. 235 (1958). In the latter case, the Supreme Court, taking up what was expressed in the International Shoe's case, states that: "(…) it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws (…)". See also: International Shoe v. State Washington, 326 U.S. 310 (1945).

obligation raised in court but is introduced as a safeguard clause. If it is not chosen by the parties as the place of performance of the obligation deduced in court but determined in another place according to the rules of the signed contract. In this case, the virtual connecting factor will not be applied since the connection with the activities that the defendant has carried out in that territory is not taken into consideration. In this case the test of purposeful and substantial connection is presented as a limiting clause of indirect jurisdictional criteria provided for by the law. And especially since we are talking about contracts, we note both the place of the concluded contract and the place where the various phases that led to the conclusion of the negotiations are carried out (Van Lith, 2009).

The "purposeful and substantial connection" test will be satisfied when the execution of the contract in the country of origin takes place in various activities such as in the case of payment of the price, the delivery of goods, the experimentation of pre-contractual negotiations, etc. And in the event that the State has issued the sentence and has already hosted one of these activities then the head will have a negative character.

The test we are referring to is not of a judicial nature but is a limiting clause that can be used in all cases where the principle of due process is not respected and where the connection between the defendant and the State is of a formal and non-

substantial nature[17] as well as the compromise reached during the negotiation.

The application of the rule compromises the mutual recognition between European and US judgments. The project of Convention does not guarantee the recognition and execution of the decisions made in application of the Regulation Brussels I bis since the place of execution does not correspond to that provided for by the indirect criterion of art. 5 of the Project. The American courts can deny the test of the purposeful and substantial connection (Noyes, 2012) which presents a situation of unpredictability in the application of the rule (Noyes, 2012).

The recognition and execution will be limited in the event that the place of execution and the obligation inferred in the court are authentic, excluding the criteria that can meet US standards. It is unlikely that European judges will attempt to apply a test of substantial and extraneous connection to their own tradition, risking to generate an unbalancing treatment in the face of the application of the rule (Bonomi, 2015-2016).

Civil offenses and related judgments

With regard to non-contractual obligations, the project of Hague takes into consideration an indirect criterion of jurisdiction for

17HCCH, Third Meeting of the Special Commission on the Recognition and Enforcement of Foreign Judgments 13-17 November 2017, op. cit., par. 15ss.

the purpose of recognizing the execution of decisions according to art. 5, par. 1, lett. j). A decision that can be recognized and enforced in another Contracting State and has as its content a non-contractual obligation arising from death, physical injury, damage or loss of material assets or the act or omission of the person who directly caused the damage and occurs in the State of origin without taking into account the place where the damage occurred.

Non-contractual obligations can be recognized and executed according to the Convention even if they do not comply with the jurisdictional conditions and which are provided for by the law in question and the habitual residence is satisfied according to art. 5, par. 1, lett. to). This is a general and broad jurisdiction criterion that applies to all decisions falling within the material scope of the convention. The project of the Hague did not define, indeed it exceeded the notion of the non-contractual obligation, because it is included in the content of the same provision of damages. These are non-contractual obligations deriving from death, personal injury, damage to material assets. The standard does not apply to hypotheses that are not related to physical injuries or damage to things.

The irrelevance of the place of verification of the harmful event

The place of the harmful event is not a sufficient criterion for the recognition of the foreign decision. The law establishes that the non-contractual matter concerning death, personal injury or damage to material assets is recognized in the event that the act of omission of the cause of the damage is carried out in the State of origin and without taking into consideration the place of harmful event.

This is a position that is in contrast with the jurisdictional criterion in the field of civil offenses that are included in the Brussels I bis Regulation and especially in art. 7, no. 2 where reference is made to the place where the harmful event occurred. Also in this position the common law system is followed (North, 2020) where the jurisdiction of the American courts is denied in relation to the place where the harmful event occurred (Steinman, 2012)[18]. A discussion starts from scratch since the European vision of the protection of the good administration of justice that follows the principles of forecasting and proximity like the American one that tries to protect the defendant in the framework of due process is not taken into consideration.

The Project of Hague rightly excluded the indirect damages of a moral or psychological nature suffered by the family members of the victim since the relative decisions may not be recognized

18World-wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980). Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987). J. McIntyre Machinery, Ltd. v. Nicastro, 564 U.S. 873 (2011).

according to the provision in question and since the convention excludes injury of a non-physical nature and is refers to damage directly caused by the action or omission of the person who caused the damage. An interpretation that appears more respectful in the regulatory text, but it is not excluded that this path may also be of a negative nature, given that we are referring to non-contractual obligations deriving from death, i.e. non-pecuniary damage suffered by victims who fall within this circle[19].

As regards the place of action or the omission of the damage, it will not be necessary to assess the suffering in the country of origin but it is sufficient to justify the jurisdiction of the State of origin. Also in this case the CJEU took a position through the old Andelskwekerij G. J. Bier BV v. Mines de Potasse d'Alsace SA of 1976[20] judgment where it specified the connection of illicit acts where its constituent elements can be located in several countries.

The CJEU ruled on the identification of the place where the harmful event occurred. He affirmed the provision:

"(...) to be given to the plaintiff a faculty of choice, as to propose the claim in the place where the damage occurred, or in the place of the event giving rise

19F. Garcimartín, G. Saumier, HCCH, Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters: Explanatory Report, op. cit., par. 157.

20CJEU, C-21/76, Handelskwekerij G. J. Bier BV of 30 November 1976, ECLI:EU:C:1976:166, I-01735.

to such damage (...)"[21].

Both the place of the damage that is the Netherlands and the verified conduct that produced the damage, i.e. France, paved the way for the relative competence of the decision-making courts. The CJEU took into consideration: "(...) the place where the damage actually occurred (...)"[22].

The *forum non conveniens* as a reason for non-recognition

The theory of *forum non conveniens* as an exclusion criterion of a US nature (Davies, 2002; Filipour, 2019; Cervone, 2020)[23], England, Ireland, and Australia (Briggs, 1989; Gray, 2009, Yekini, 2021)[24] declares the local judge of the harmful conduct as incompetent but the judge of another State competent to decide the case. Criterion which has as its basis to exclude foreign actors in relation to damage suffered abroad and without

21CJEU, C-21/76, Handelskwekerij G. J. Bier BV of 30 November 1976, op. cit.

22The CJEU acknowledged: "(...) the plaintiff's right to appeal to both the judge of the place of the conduct generating the damage and that of the place where the damage occurred, has limited the number of compensable damages with subsequent decisions (...)". See the case: C-68/93, Shevill and Others of 7 March 1955, ECLI:EU:C:1995:61, I-00415.

23Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981). The case concerns a plane crash that occurred in Scotland involving a Piper Aircraft aircraft. It is an aviation company that has its headquarters in Florida. The administrator of the assets of the victims who were Scottish passengers asked for damages in the United States but after conflicting rulings the Supreme Court stated that: "(...) the Scottish court, the place where the incident, while declaring the termination of the proceedings in America. In a critical sense towards the application of the *forum non conveniens* theory in the United States (...)".

24Oceanic Sun Line Special Shipping Company Inc v Fay, 1988 HCA 32 (30 June 1988).

a strong link between the forum and the defendant's activities. It is a direct mechanism where the *forum non conveniens* (Beaumont, 2018) is not regulated by the project of the Convention but remains a discretionary tool of the individual States[25].

The project provides a jurisdictional criterion for civil offenses and is very close to that used in the US system and the European road (Hill, Chong, 2018)[26], therefore the possibility of using the *forum non conveniens* doctrine based on the fact that the damage is manifested abroad is necessary (Bonomi, 2015-2016).

(Follows) The notions of consumer and worker

The Bruxelles I bis through art. 18 and art. 6, par. 1 of Rome I have defined the consumer through a contract: "(...) for a use that can be considered unrelated to his professional activity (…)" (Liakopoulos, 2019b). The counterparty to the contract is a

25Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters, adopted by the Special Commission on 30 October 1999, art. 22.

26The CJEU affirms that: "(…) The doctrine of the forum non conveniens incompatible with the Brussels system (…) is such as to jeopardize the predictability of the rules on jurisdiction provided for by the Brussels Convention, in particular that referred to in art. 2 and, consequently, the principle of legal certainty, as the basis of the Convention itself (...) the doctrine of the forum non conveniens (...) in the context of the Brussels Convention would risk undermining the uniform application of the rules on jurisdiction therein. provided, since the said exception is recognized only in a limited number of Contracting States, while the purpose of the Brussels Convention consists precisely in providing for common rules, excluding divergent national rules (…)". C-281/02, Owusu of 1st March 2005, ECLI:EU:C:2005:120, I-01383, parr. 41-43, relating to a situation in which the defendant was domiciled in the territory of a Contracting State but most of the other items were in a third State.

professional and/or the trader as established by art. 6, par. 1, of Regulation Rome I, as: "(...) a person acting in the exercise of his commercial activity (…)" (Liakopoulos, 2019b). The consumer is the person who enters into a contract to satisfy needs of a personal nature and which are unrelated to his working activity, without detecting his subjective condition[27]. The consumer's participation in the selection of the regulatory law does not translate into a simple adherence to an *optio legis* made *a priori* and unilaterally (Draguiev, 2014) but in the general conditions of the contract, as happens for example in the adhesion contracts.

The autonomy of the will can result in a chance for the contracting consumer to obtain guarantees for their own interests that are certainly better than those corresponding and contemplated in the *lex originis,* that is, in the legal system of the country of their habitual residence. In practice, the Regulation Rome has superseded the regulatory proposal between the position of the protected consumer and that of the professional where in this case the requirement of residence in a member country of the Union was not foreseen. Also in order to adequately appreciate the extent of the aforementioned substantial change introduced in the final text of the new

27CJEU, C-269/95, Benincasa of 3 July 1997, ECLI:EU:C:1997:337, I-03767, parr. 15-18.

Regulation on the law governing contractual obligations, it is recalled that the provision of material treatment is oriented towards consumers habitually resident in a country of the European Union (Straetmans, 2004).

In any case, the exclusion from the special regime of contracts concluded by a professional with another subject for needs related to his own activity and outside the eventuality that it is the weak contracting party to guarantee specific protection that is the intermediate consumer. The exclusion of the material scope of art. 6 of Regulation Rome I (Moravcovà, 2022) of contracts concluded by professionals with other subjects such as users of goods or services such as households, family members or employees objectively find themselves in a disadvantaged contract position. This type of contracts with consumers do not include transports and are different from contracts concerning the notion of consumer also as persons on behalf of which a contractor eventually undertakes to purchase certain services like the rest of any person to whom such services are transferred, as in the case of holidays, travels and all-inclusive circuits.

According to the conference of Hague, the contracts concluded by consumers are: "(...) of a natural person who acts mainly for personal, family or domestic purposes (...)". Art. 2, par. 1, lett. a) of the 2005 convention on choice of court agreements

excludes contracts concluded by consumers from the scope of application of the same convention (De Nardi, De Araujo, 2020). A certain type of definition is contained in art. 5, par. 2 of the Draft Convention on the recognition and enforcement of decisions, which clarifies the role of the consumer as:

"(…) a natural person acting primarily for personal, family or household purposes (a consumer) in matters relating to a consumer contract (…)" (Köhler, 2017)[28].

In reality, the project of the Hague is similar to that of the Regulation Brussels I bis. The only difference dates back to art. 15, par. 1, lett. a) and b) specifying the requirements that must be included in the contract between the trader and the consumer. These are contracts for the sale of tangible movable assets in installments and/or through a loan with repayment in installments or from other credit transactions related to the sale of the same assets. This is extended protection and the contract is concluded:

"(...) with a person whose commercial or professional activities take place in the Member State in which the consumer is domiciled or are directed, by any means, to that State (…)", according to art. 15, par, 1, lett. c) (Chalas, 2016).

The problematic nature of these contracts, including also electronic ones, is in the fact that the trader intended to address

28CJEU: C-70/15, Emmanuel Lebek v. Janusz Domino of 7 July 2016, ECLI:EU:C:2016:524; C-12/15, Universal Music International Holding BV v. Michael Tètreault Shilling of 16 June 2016, ECLI:EU:C:2016:449; C-605/14, Virpi Kom v. Pekka Komu and Jelena Komu of 17 December 2015, ECLI:EU:C:2015:833; C-438/12, Irmengard Weber v. Mecthilde Weber of 3 April 2014, ECLI:EU:C:2014:212, the just cited cases published in the electronic Reports of the cases.

the State in which the consumer obtains his domicile. The CJEU also in this case verified and indicated a series of clues necessary to bring clarifications such as the use of languages, foreign currencies and the international nature of the activity[29]. It is not enough to be accessing the website to be able to configure the professional's activity as directed towards a Member State (Niesel, 2019).

The project of Hague has led to some specific paths relating to contracts concluded by consumers and above all that the counterparty must be a professional or a trader. In this case, the rule is wider and always faithful to the Brussels system where it applies both to contracts concluded between consumer and professional and to contracts concluded between consumers (Born, 2021; Ahmed, 2022; Mchizrgvia, 2022; Avraham Giller, 2022)[30].

The project did not give a concrete definition to the worker with regard to employment contracts but refers to the norm of employees and not self-employed workers[31]. It also refers to

29CJEU, C-585/08, Pammer and C-144/09, Hotel Alpenhof of 7 December 2010, ECLI:EU:C:2010:740. C-501/20, MPA (Rèsidence habituelle-État tiers) of 01 August 2022, ECLI:EU:C:2022:619, not yet published.

30See, Hague Conference on private international law, Convention of 30 June 2005 on Choice of Court Agreements. Text adopted by the Twentieth session, Explanatory report by T. Hartley, M. Dogauchi, The Hague, 2013, pp. 18ss (in the following Hartley/Dogauchi Report.

31F. Garcimartín, G. Saumier, HCCH, Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters: Explanatory Report, op. cit., par. 228.

"employee employment contracts", according to art. 5, par. 2, where the Project involves individual employment contracts and disputes between the employee and the employer that arise from the employment relationship itself. So it is a legal framework that regulates the employment contract, including collective agreements[32]. Disputes directly arising from a collective agreement involving a worker representation body (normally a trade union) on the one hand and an employer or an association of employers on the other are excluded from this application[33].

Consumer and employment contracts and their own judgments

Consumer contracts include weak parties, that is, figures such as the consumer, the insured worker who need further protection than that accorded to other subjects. They are considered as weak since they are economically weaker than the other policyholder[34], i.e. the employer and the insurer.

The economic needs of the worker are based on the contract

32Art. 2 (1) (b) of the 2005 convention on choice of court agreements, excludes agreements relating to employment contracts, including collective ones, from the material scope. They would appear to be included in art. 5, par. 2, of the Project.

33F. Garcimartín, G. Saumier, HCCH, Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters: Explanatory Report, op. cit., par. 229.

34CJEU, C-297/14, Hobohm of 23 December 2015, ECLI:EU:C:2015:844, published in the electronic Reports of the cases.

through a subordinate relationship with the employer and with legal instruments of the contract that respects the strong party. The weaker parties cannot negotiate the contractual conditions but accept the conditions from the counterparty as can be seen from the insurance contracts. And in the event of disputes, the weaker party is the most damaged also from the point of view of court costs.

In the European complex, in the context of contracts of this type, we have the protection holes that have the purpose of facilitating the jurisdiction of the parties who suffer due to the contractual non-equilibrium. The Regulation Brussels I bis in the case of insurance contracts allows the insured, the consumer and the worker the possibility of suing the counterparty that may have and present a plurality of courts. The domicile of the insured and the consumer is also added in the general forum of the defendant as provided for in articles 3 and 4 of the Regulation, as well as the employment forum where the worker is located. And in the case of several countries involved, the location where the worker took up service is chosen and as established by section 5 of the Regulation Brussels I bis.

Even in choice agreements (Vareilles-Sommières, 2007; Hay, 2013; Van Calster, 2016; Ahmed, 2017; Beaumont, Danòv, Trimmings, 2017; Dohrn, 2020; Caliess, 2020; Van Calster, 2021) the weak parties have limited effectiveness since they

prevent the strong party from using the contractual power in an instrumental way and depriving the weak party from the judicial protection guaranteed by the Regulation.

They are therefore valid in the event that they are concluded at a later stage of the dispute and according to art. 25 par., 4 of the Regulation the extension of jurisdiction assesses the weak contractor. If they are before the dispute began and at the time of the conclusion of the contract, the photo selection agreements are invalid. They are valid only if the weak party is given the possibility of referring to a further forum respectively under articles 15, no. 2, 19, n. 2 and 23, n. 2 of the Regulation of Brussels I bis (Van Calster, 2016).

The project of Hague did not take a position with regard to insurance contracts but only to those of consumer contracts. The project took into consideration some indirect jurisdictional criteria according to art. 5 for issues related to the criterion of acceptance of jurisdiction as an indirect jurisdictional criterion according to art. 5, par. 1, lett. g) where the decision of the State of origin, where the defendant accepted the jurisdiction during the proceedings, is presented as suitable for recognition and enforcement. We are talking about acceptance of the sentence which will be expressed and not be tacit before the court. The project appears so protective and faithful to Regulation Brussels I bis given that it refers to the acceptance of jurisdiction

expressed before a court of the State of origin and that it excludes the types of choice of court and out-of-court agreements which are contemplated in the European context. In this sector, the European path has won and has remained very far from that of the United States.

The recognition of judgments in favor of the weaker party

When a sentence is in favor of the consumer or worker, decisions based on the habitual residence of the professional or employer or in the place of performance of the contractual obligation can be recognized. As well as in cases where the professional or the employer has accepted the jurisdiction even tacitly. This system is envisaged only if the decision is contrary to the consumer or worker and not to the case in which it is favorable. The general rules apply when the weak party requests the recognition or execution of a decision favorable to him.

Indirect jurisdiction criteria are not favorable to the weaker party. The project in favor of weaker parties risks leading to various types of outcomes and perhaps of an ambiguous nature especially for consumers and especially since the jurisdictional rules dedicated to the Bruxelles I bis Regulation are those that are closest to those of the United States, i.e. of the purposeful and substantial connection.

Judgments on intellectual property

The territoriality criterion is a main element in the field of intellectual property and as a basis where they are governed by the law of the State in which the conflict rules of that particular State are used and apply. The same holder of the rights could enjoy rights of different content and forms of protection depending on the legal system in which the protection is requested.

The principle of territoriality in the matter of intellectual property delimits the scope of domestic law as well as the conflict rules contained in the internal legislation of a State. Every aspect of the discipline of an intangible asset is governed by the law of the place where the asset is used or is intended to be used. The right of intellectual property arises and exercises the contents that this same system provides. This means that a set of national rights on the one hand at the European level and on the other hand at the US level has as a final result two different procedures to be implemented to obtain the related titles and to exercise different forms of protection.

The only constraint is the territoriality of intellectual property rights and they are part of the decisions that are pronounced on cases located in States other than those of the court seised where questions of recognition and enforcement may arise. We are following the American path and not the Regulation Bruxelles I

bis which guarantees the circulation of decisions also in this matter.

A distinction exists between decisions on the validity of an intellectual property right and those of conviction issued in an infringement procedure[35].

According to art. 2, par. 1, lett. m) of the Project we note the exclusion from the subject of intellectual property and the analogous matters from the scope of the Judgments Project which in some countries are considered as such and in others are excluded. The pathways are the detailed and non-exhaustive list of issues related to intellectual property and in the scope of application as well as leaving the road open without any specific decision[36]. The expression "analogous matters" has been inserted in brackets and has paved the way for further study on the subject. If intellectual property decisions are excluded from the future convention, their recognition and execution are governed by the national law of each State or by bilateral or multilateral instruments concluded by the States (Larsen, 2017)[37]. The inclusion is based on articles 5, par. 3, 6, lett. a), 7,

35HCCH, Recognition and Enforcement of Foreign Judgments. Treatment of Intellectual Property-Related Judgments under the November 2017 draft Convention, Background Doc. of May 2018.

36HCCH, Recognition and Enforcement of Foreign Judgments. Treatment of Intellectual Property-Related Judgments under the November 2017 draft Convention, op. cit.

37See the Berne Convention for the protection of literary and artistic works revised in Stockholm on 14 July 1967. Concluded in Stockholm on 14 July 1967. Approved by the Federal Assembly on 2 December 1969. Ratification document

par. 1, lett. g), par. 3 and 11 as a property decision from a Contracting State which could be recognized and enforced in another Contracting State and under the provisions of the Convention.

(Follows) The validity of the judgments of intellectual property rights

Both art. 24, n. 4 of Regulation Brussels I bis (Ubertazzi, 2012; Van Eechoud, 2016; Larsen, 2017), and art. 6, lett. a) of the Hague Project grant exclusive jurisdiction to the judge of the place of registration or deposit.

This discipline provides for a possible control over the jurisdiction of the court of origin also in the context of the European Union where it is prohibited since it seeks to protect imperative or mandatory rights.

The judge with the rule of exclusive jurisdiction is the closest judge and has the correct administration of justice as the final objective[38].

In the European context and according to the Brussels I bis Regulation, failure to comply with the criterion of exclusive jurisdiction constitutes a reason for refusing the recognition

deposited by Switzerland on 26 January 1970. Entered into force for Switzerland (art. 22-38) on 4 May 1970. (Status as of June 6, 2006).

38CJEU, C-288/82, Duijnstee of 15 November 1983, ECLI:EU:C:1983:326, I-03663, par. 22.

and/or execution of the foreign decision as provided for by art. 45, n. 1, lett. and, point ii) and after the request of the interested party and when the same has been automatically recognized and executed in the required State.

On the contrary, in the project of the Hague, exclusive jurisdiction applies both in the event that the question is raised primarily and in the event that it is presented by way of an exception during a counterfeiting procedure[39]. Therefore, the judgments pronounced on the validity of an intellectual property right by a court of origin other than that of the place where the registration or filing took place cannot be circular, because their recognition will be prohibited by the rules of the future convention of the Hague.

In particular art. 6 of the project of Hague meets the jurisdictional criteria that are suitable for recognition and enforcement according to the convention and under the national law. However, the project does not set a minimum standard for recognition as in the case of the indirect jurisdictional criteria referred to in art. 5 but to an exclusive and inalienable criterion.

A different path is followed from that envisaged by Brussels I bis, where the rule on the exclusive competences of the project of Hague applies only to decisions that commit to intellectual

39See art. 24, n. 4 of the Regulation Bruxelles I bis, which codifies the decision resolved by the CJEU with the sentence in the case: C-4/03, Gesellschaft für Antriebstechnik of 13 July 2006, ECLI:EU:C:2006:457, I-06509.

property rights and primarily by regulating a separate rule relating to a preliminary or incidental issue[40].

Judgments on counterfeiting

First of all, we can say that the rights relating to counterfeiting are not subject to criteria of exclusive jurisdiction. Counterfeiting decisions are susceptible to recognition and enforcement pursuant to art. 5, par. 3 of the project that respect the jurisdictional criterion in an indirect way. The project distinguishes intellectual property rights that need filing and registration as in the case of patents, trademarks or licenses and do not require registration such as copyright. In all these cases the decisions are suitable and recognized to carry out the project in the event that the judge of the place where they are protected is able to decide. If it is a sentence on counterfeiting it must satisfy the jurisdictional filters that are dedicated to the subject of the project of art. 5, par. 3 and does not apply to general criteria provided. The project of Conference followed, let's say, a compromise towards the material application of the convention. With a cautious and concrete way, the principle of territoriality that characterizes the matter of intellectual property

40The rules governing the matter of intellectual property as well as those relating to antitrust or privacy, are still enclosed in square brackets in the draft of the Hague. These are the rules that are the subject of discussion and analysis on which no agreement has been found during the negotiation.

is faithfully respected.

In the case of counterfeiting, the validity and exclusivity do not enter the indirect criterion of jurisdiction provided for the decisions made at the outcome of a judgment. The connecting factor is the same, i.e. where the registration or filing took place in the country of origin and the main difference is in the relationship with national laws. The exclusive jurisdiction excludes the possibility that the decision not complying with the criterion foreseen by the project is recognized and executed according to national law. This possibility exists in the indirect jurisdictional criterion that is provided for decisions on counterfeiting as provided for by art. 16 of the Project which leaves the possibility to the contracting States to recognize foreign decisions according to domestic law.

Counterfeiting is ascertained as a consequence of the validity of intellectual property rights according to art. 8, par. 3 of the project which, unlike the Brussels model which remains on the path of exclusive competences, deals with the circulation of preliminary issues. If the holder of the rights acts in infringement, he opposes the objection of invalidity of the title by the alleged infringer. In this case, the infringer does not distance himself from the state of the art or the distinctive sign and asserts his lawful activity to an intellectual property right of others. Of course, in this case a sentence is needed to terminate

the anti-legal behavior or to pay compensation for damages where the judge accidentally finds out about the validity of the right.

The recognition or enforcement may be sent or denied in the event that the proceedings relating to the validity of the registration of the intellectual property right are pending at the State of registration. Thus, the requested State is given the possibility to deny recognition or execution or to suspend the decision pending the sentence of the judge or competent authorities that have exclusive jurisdiction over the validity of the intellectual property right in question. However, if the judge is not the same as the one who carried out the incidental assessment, the infringer can oppose to ascertain a separate judgment regarding the invalidity of the title. In the pending case, the recognition judgment is suspended pending the decision and as required by art. 8, par. 3, lett. b) of the project.

In particular art. 8, par. 3, lett. a) of the project clarifies that recognition or enforcement may be denied in the event that the ruling on the validity of a right of deprivation at a preliminary stage conflicts with another ruling of a competent authority in the matter and renders the State in which the registration of the intellectual property right takes place. The project protects the exclusive jurisdiction of non-contracting States. When the judge appeals to the State that made the decision on the preliminary

question, the judge of the requested State may in this case not recognize or execute the decision made by the first State on the preliminary question.

This is a circulation of decisions that are not based on the validity of the title but which are pronounced on the validity of the title and must be decided by the judge of the State in which the title is constituted and represents a compromise between the dispute that arises and the concrete problems where copyright requires and demands to protect the principle of territoriality shared by domestic law and legal systems at European level.

(Follows) Inhibitory pronunciations

It is normal that in the case of convictions of counterfeiting and where the assessment of the liquidation of damages is requested, injunctions are also allowed, i.e. the sentence to *a facere* or *non-facere.* It is a question of non-doing in the field of intellectual property where it focuses on injunctions that have prohibited the production and marketing of goods such as the use of protected production processes.

The project of Hague is oriented to exclude the scope of application of the convention and injunctions due to the recognition in the State of decisions that contain orders other than monetary compensation[41].

41HCCH, Recognition and Enforcement of Foreign Judgments. Treatment of

In particular, art. 11 excludes these from the obligation to recognize and execute a decision of a State of origin in another requested State. The rule provides that intellectual property decisions have a remedy other than monetary and cannot be recognized and enforced according to the convention.

In the event that the decision provides for the payment of a sum of money, the recognition according to art. 10 can be refused to the extent that exemplary or punitive damages are recognized that do not compensate for losses suffered or lost earnings. In this case, the convention seeks a balance through the obligation to recognize and enforce compliance with the principles of public order according to national law (Jang, 2020). What is required is recognition based on the convention according to the patrimonial consequences of counterfeiting. These are minor licenses as well as minor sales with competitive use of the protected resource that produced the owner the consideration in which the owner granted the license to the counterfeiter as well as the proceeds of the counterfeiter who carried out the illegal activity. In this way, the compensatory decision for the payment of the relative sums is made and the obligation of recognition by the States is stopped.

The recognition of punitive damages are widespread in

Intellectual Property-Related Judgments under the November 2017 draft Convention, op. cit.

monetary convictions in the field of intellectual property and in the case that clashes with public order and with the legal principles underlying domestic law. The damage has a compensatory function of patrimonial balance as an offense and cannot perform a preventive function of a special nature. In this situation, if there is a difference in terms of public order, the solution is the one adopted by the convention. That is, the exclusive recognition of the decisions of compensation for monetary damage with the exclusion of the inhibitory part and not the compensation of the damage.

The principle of territoriality is based on the entire field of intellectual property as well as the inclusion of the matter within the scope of the convention and as a useful tool for the implementation of rights in a sector that involves the development of trade globally[42].

Concluding remarks

The structure of the Hague Project, as we have understood so far, seems very balanced from the point of view of legislative policy given that its structure and its rules represent the result of

42HCCH, Third Meeting of the Special Commission on the Recognition and Enforcement of Foreign Judgments 13-17 November 2017, Note on the Concept of "Purposeful and Substantial Connection" in article 5(1)(g) and 5(1)(n)(ii) of the February 2017 Draft Convention, op. cit., HCCH, Third Meeting of the Special Commission on the Recognition and Enforcement of Foreign Judgments 13-17 November 2017, International Bar Association Litigation Committee, Second Report to the HCCH Special Commission on the Recognition and Enforcement of Foreign Judgments, Info. Doc. No 15 of November 2017.

a compromise between different visions of the legal systems involved and noted in the negotiation phase. From a legal point of view, various contradictions can also be seen as normal and it is hoped that they will allow us to achieve better results in the coming years.

The structure is simple and governs the recognition and execution of decisions. This is the indirect jurisdiction that provides for a list of jurisdictional criteria which, if respected by the State of origin, result in the recognition of the foreign decision in the requested State. The choice was formed by the logic of legislative policy, as the most ambitious project of 1999 governed both jurisdiction and the recognition and enforcement of decisions. A project that has had a certain failure mainly due to the disagreement by the States regarding the rules of jurisdiction.

We still have no progress in terms of privacy and defamation that generate disputes at a global level with the risk of not seeing European contractual decisions recognized in the United States that do not meet the criterion of purposeful and substantial connection.

However, the present project seems more suited to the jurisdictional criteria between European Union and United States as it appeared largely through common law and the Brussels system. A project that arouses the consensus of the

United States which represents an important development towards the consensus of States with systems less open to the recognition of foreign decisions.

The hypothesis of regulating the jurisdiction is not abandoned by the Conference which has chosen to proceed in stages and to deal with the direct criteria of jurisdiction[43]. The idea of dealing separately with direct jurisdictional criteria is a constant desire that can be understood from the documents of the Conference[44]. The Conference could therefore prepare an additional, optional instrument[45], that directly regulates jurisdiction, i.e. rules concerning exorbitant jurisdictional criteria and *lis pendens.*

It is still a long way off to speak for a unification on a global level, especially if one thinks of that of the European Union which still remains faithful to Brussels I bis as a representative of a level of integration on a global scale. Certainly the approximation between different legal systems and the one that interests most between the United States and the European Union will come closer through the determination of the jurisdiction that remains strongly anchored to the sovereignty of each individual State.

43HCCH, Conclusions and Recommendations adopted by the Council (13-15 March 2018), p.1.

44HCCH, Report of the fifth meeting of the Working group on the Judgments Project and proposed draft text resulting from the meeting, Prel. Doc. No 7A of November 2015, p. 3.

45HCCH, Ongoing Work in the Area of Judgments, Prel. Doc. No 7B of January 2016, p. 4.

The overcoming of the criterion of doing-business jurisdiction by the US Courts, especially by legal persons, can be rooted in the jurisdiction of only a State where the companies are essentially at home and in the place of incorporation or where the head office is located (therefore it follows the way of the Brussels system) (Arrington, 2018; Crump, 2021)[46].

The near future will clarify the issues and find an agreement for a convention on the recognition and execution of foreign judgments in civil and commercial matters that will certainly try to satisfy the various players on the global scene which is a useful tool for the circulation of decisions.

46Goodyear Dunlop Tires Operations, S. A., et al. v. Brown, 564 U. S. 915 (2011).

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